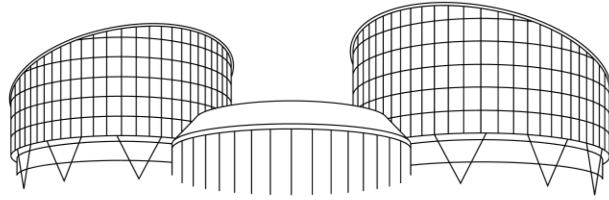

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAMSONNIKOV v. ESTONIA

(Application no. 52178/10)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Samsonnikov v. Estonia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President,*
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 12 June 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 52178/10) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Dmitry Samsonnikov ("the applicant"), on 10 September 2010.

2. The applicant was represented by Ms M. Issaeva and Ms M. Suchkova, lawyers practising in Moscow. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his expulsion from Estonia had violated his right to respect for his family and private life guaranteed under Article 8 of the Convention.

4. On 30 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The Russian Government, having been informed by the Registrar of their right to intervene (Article 36 § 1 of the Convention), indicated that they did not intend to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978. He currently lives in St Petersburg, Russia.

A. Factual background

7. The applicant was born in Estonia and had not permanently resided in any other country until his expulsion from Estonia.

8. The applicant completed his basic education in Tallinn in 1993 in a school where the language of instruction was Russian. His knowledge of Estonian was graded "4" ("good") at school.

9. In 1994 the applicant's mother died in Moscow. She was buried in Russia.

10. From 20 June 1995 until 20 June 2000, from 5 May 2003 until 4 May 2005 and from 5 May 2005 until 4 May 2008 the applicant had temporary residence permits in Estonia.

11. In the meantime, in 1998, the applicant applied for, and was granted (as a citizen of the former USSR), citizenship of the Russian Federation. According to the applicant, in the late 1990s he attempted to acquire Estonian nationality. However, he never made a formal request to that effect.

12. The applicant has three criminal convictions in Estonia:

- on 27 January 1997 the Tallinn City Court convicted him of aggravated hooliganism (he had beaten a person in the street and later broken a door of an apartment and beaten its inhabitants together with two co-defendants), aggravated theft and attempted theft; he was sentenced to two and a half years' imprisonment, suspended;

- on 26 September 2000 the Tallinn City Court convicted him of attempted aggravated theft and violence against a police officer (he had punched the officer in the face); he was again sentenced to two and a half years' imprisonment, suspended;

- on 22 March 2001 the Tallinn City Court convicted him of attempted aggravated theft; he was given eight months' imprisonment. Taking into account the earlier, unserved sentence, the court set the compound sentence to be served by the applicant at two years and seven months' imprisonment. It was noted in the judgment that in the course of 2000 the applicant had been punished seven times for administrative offences of petty theft and consumption of narcotic substances.

13. The applicant was released on 4 September 2003 after serving his prison term.

14. From 2006 until 2009 the applicant was given seven punishments for misdemeanours (illegal consumption or possession of narcotic drugs and travelling on public transport without a ticket).

15. The applicant is HIV-positive and suffers from hepatitis C.

B. Proceedings in Sweden

16. In the meantime, on 6 December 2007, the applicant was arrested in Sweden on suspicion of smuggling of drugs.

17. On 7 March 2008 he was convicted of aggravated drug smuggling by the District Court of Helsingborg in Sweden. According to the judgment he smuggled more than 400 Subutex pills over the Swedish border. He was sentenced to two years and four months' imprisonment and began serving his sentence in Salberga Prison in Sweden. In addition, the District Court decided that the applicant was to be expelled from Sweden and to be subsequently prohibited from entering the country before 7 March 2015. The court was unable to verify the applicant's argument that he had a daughter in Sweden since he declined to disclose the alleged daughter's or her mother's personal details such as their names and addresses.

18. The applicant appealed against the District Court's judgment. However, since he subsequently withdrew his appeal, the Scania and Blekinge Court of Appeal struck the case out of its list of cases on 24 April 2008.

19. In February 2009 the applicant requested the reopening of his case in Sweden, arguing that because of the prohibition on entry imposed by the Swedish court the Estonian migration authorities had refused to extend his residence permit in Estonia. He requested the removal of the deportation order from the judgment.

20. On 20 April 2009 the Scania and Blekinge Court of Appeal refused to reopen the case. On 26 May 2009 the Swedish Supreme Court refused the applicant leave to appeal against that decision.

21. On 10 July 2009 the applicant was released from prison in Sweden and deported to Estonia.

22. In the case file there are also copies of printouts from the Schengen Information System, according to which the applicant was to be refused entry or stay in the Schengen area until 20 September 2010 (this notice was entered into the system on 20 August 2007) and later until 17 July 2011 (entered into the system on 17 July 2008). It appears that on 24 August 2009 the Swedish authorities extended the prohibition on the applicant's entry to the Schengen area until 24 August 2012.

C. Proceedings in Estonia and further developments

23. In the meantime, on 11 February 2008, while in custody in Sweden, the applicant applied for an extension of his residence and work permit from the Estonian Citizenship and Migration Board (*Kodakondsus- ja Migratsiooniamet* – hereinafter "the Board").

24. By a letter of 10 September 2008 the Board informed the applicant that he would be denied an extension of his residence and work permit. He was requested to present his opinion and objections. In reply, the applicant asked for the Board's letter to be translated into English or Russian since he did not have sufficient command of Estonian and being in prison he could not have the Board's letter translated. On 30 September 2008 the Board sent the applicant a Russian translation of the letter. In his objections sent to the Board the applicant reiterated his request for a residence permit, saying that he wished to return to Estonia after his release from prison in Sweden. He submitted that he had been born and raised in Estonia and that he had his father and brother in that country. In spite of his Russian nationality he had never lived in Russia and had no place of residence or relatives there. He was seriously ill and the treatment he would continue to need could be carried out only in Estonia. His father also needed his support because of his age.

25. On 18 November 2008 the Board refused to extend the applicant's residence and work permit. It had regard to the nature and severity of the offences committed by the applicant (already mentioned above), the fact that his criminal record had not expired and that an alert had been issued for the purposes of refusing him entry into Schengen countries, as well as the fact that he was serving a prison sentence in Sweden. The Board considered that although the applicant had been born in Estonia and his father and brother lived in Estonia, he did not have a family life in that country. It further considered that the applicant could continue his treatment in Russia. The Board found no exceptional circumstances that required extending his residence permit. In conclusion, the Board considered that the refusal to extend the applicant's residence permit was a proportionate measure for pursuing the aim of protecting the constitutional rights of others.

26. The applicant lodged a complaint against the Board's refusal with the Tallinn Administrative Court. He argued that the decision of the Board had been insufficiently reasoned and that the refusal infringed his right to respect for family life. At the Administrative Court's hearing the applicant was represented by his father and a legal advisor.

27. By a judgment of 28 April 2009 the Tallinn Administrative Court dismissed the applicant's complaint. It found that the Board's refusal was lawful. The court agreed with the Board's finding that the applicant's criminal behaviour posed a threat to public safety. Furthermore, the

prohibition on entry into the Schengen area imposed by the Swedish authorities also extended to Estonia.

28. The Administrative Court considered that the Board's decision did not infringe on the applicant's right to respect for family life. It noted that the applicant was divorced and had no partner or children. His father lived with his partner at the latter's residence. The applicant's brother had a family of his own. The court concluded that the applicant did not have a family life to be protected in Estonia. The court also dismissed the applicant's arguments related to the advanced age of his father who was sixty-five years old, to the applicant's illness and the fact that he had been born in Estonia. It found that there were no exceptional circumstances to justify the extension of his residence permit.

29. On 10 July 2009 the applicant was transferred from Sweden to Estonia.

30. On 1 August 2009 the applicant began living with V., a person of undetermined citizenship who held a permanent residence permit in Estonia, as his partner.

31. On 16 September 2009 the applicant sought permission from the Board to be allowed, by way of exception, to submit an application for a residence permit with the Board directly instead of submitting it to a foreign representation of Estonia. On 30 September 2009 the Board refused to grant the permission and declined to consider his application for a residence permit.

32. On 27 October 2009 the Tallinn Court of Appeal heard the applicant's appeal against the Tallinn Administrative Court's judgment. The Board's representative submitted that based on humanitarian considerations the applicant's expulsion procedure had not been initiated because of the ongoing court proceedings concerning his residence permit.

33. On 12 November 2009 the Tallinn Court of Appeal upheld the Administrative Court's judgment of 28 April 2009. It noted, *inter alia*, that under section 12(4-1) of the Aliens Act (*Välismaalaste seadus*) a temporary residence permit could be issued, by way of exception, to an alien in respect of whom a prohibition on entry into the Schengen area had been issued. The Board and the Administrative Court had considered whether making such an exception had been justified in the present case but had found that this had not been warranted in the circumstances. The Court of Appeal also noted that the applicant had not turned to the Swedish authorities in order to have the period of validity of the prohibition on entry into the Schengen area amended as stipulated by the Obligation to Leave and Prohibition on Entry Act (*Väljasõidukohustuse ja sissesõidukeelu seadus*).

34. The Court of Appeal further noted that the refusal to extend the applicant's residence permit during his imprisonment in Sweden had had no bearing on his private life because the one-year residence permit that was usually granted in such circumstances would have expired before the end of

the applicant's prison term in Sweden. During the time of the service of the prison sentence the applicant's right to private life had been restricted by the execution of the sentence and it had not been dependent on the granting or refusal of a residence permit in Estonia.

35. The Court of Appeal also noted that the Board had considered the possibility of the applicant's early release from prison and his expulsion in such case. It agreed with the Board's preliminary assessment that the applicant's expulsion was not excluded and that he could reside in the country of his nationality.

36. On 10 March 2010 the Supreme Court declined to hear the applicant's appeal.

37. By a letter of 22 March 2010 the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) asked the applicant to come to its offices on 31 March 2010 so that the circumstances of his stay in Estonia could be clarified and an order (*ettekirjutus*) be made.

38. On an unspecified date the applicant left Estonia for Denmark where he stayed for four months, according to a statement from V. to the Court. He was then arrested in Denmark and on 9 July 2010 the Danish authorities made a request to their Estonian counterparts concerning the applicant's deportation to Estonia. However, his deportation on 13 July 2010 as agreed by the authorities did not take place since the applicant had escaped from them while in Copenhagen. He arrived in Estonia on 20 July 2010 via a passenger port.

39. On 29 January 2011 the applicant was arrested by the police. He was under the influence of narcotic drugs and presented an identity card of his brother, who was an Estonian national. The applicant was taken into custody. On 28 February 2011 he was fined for a breach of the Narcotic Drugs and Psychotropic Substances and Precursors thereof Act (*Narkootiliste ja psühhotroopsete ainete ning nende lähteainete seadus*).

40. In the meantime, on 31 January 2011 the Police and Border Guard Board issued an expulsion order (*ettekirjutus Eestist lahkumiseks*) in respect of the applicant. The order was immediately enforceable on the basis of section 7-2(2)(3) of the Obligation to Leave and Prohibition on Entry Act (*Väljasõidukohustuse ja sissesõidukeelu seadus*). In addition, a three-year prohibition on entry was imposed on the applicant. Pursuant to sections 7-1(2) and 7-1(3) of the above Act, the expulsion order was given by means of a standard form and it only revealed its legal basis without containing the factual basis, related circumstances or relevant considerations.

41. On the same day the Tallinn Administrative Court authorised the applicant's detention in a deportation centre until his expulsion, but for not more than two months. This authorisation was later extended until 31 May 2011.

42. The applicant challenged the expulsion order and prohibition on entry before the Tallinn Administrative Court.

43. In May 2011 the applicant made inquiries by phone and electronic mail to a public notary about the possibility to get married while in detention.

44. On 26 May 2011 the applicant applied for an interim measure and requested that his expulsion be stayed. On the same day the Tallinn Administrative Court dismissed the request. An appeal was dismissed by the Tallinn Court of Appeal on 7 June 2011.

45. In the meantime, on 27 May 2011 the applicant was expelled to Russia. He stayed with a distant relative in Sebedzh, Pskov Region, for some weeks and then lived on the street for some time. His request for medicines against HIV was granted by the local authorities although one of the medicines he had used in Estonia was not available in Russia. In September 2011 he moved to St Petersburg where he was able to find temporary non-registered accommodation and unofficial employment.

46. In the meantime, on 8 June 2011, the applicant's lawyer sought to amend the complaint lodged with the Tallinn Administrative Court. She challenged the applicant's actual expulsion and requested that the State be obliged to allow the applicant to return to the country. The Administrative Court initially registered these complaints as a separate set of proceedings but, following instructions from the Tallinn Court of Appeal, it later joined the cases and proceeded to examine the new complaints. By a judgment of 2 March 2012 the Tallinn Administrative Court dismissed the complaints. It held that the expulsion order was lawful under sections 7-2(2)(3) and 7-2(2)(4) of the Obligation to Leave and Prohibition on Entry Act, as argued by the Police and Border Guard Board, and that the three-year prohibition on entry was lawful as well. Consequently, the complaint concerning the actual expulsion and the claim to be allowed to return to the country were also dismissed. According to the applicant he has instructed his lawyer to appeal against the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. Section 12(4) of the Aliens Act (*Välismaalaste seadus*), as in force at the material time, listed the instances in which a residence permit could not be issued or extended. Section 12(4)(5) provided that a permit could not be issued or extended if the alien applying for it had been convicted of a criminal offence and sentenced to imprisonment for a term exceeding one year and his or her criminal record had neither expired nor been expunged, or the information concerning the punishment had not been expunged from the punishment register. Section 12(4)(8) provided that a residence permit be denied to persons who had been repeatedly punished for intentional criminal offences.

48. Section 12(5) of the Aliens Act provided that, by way of exception, a temporary residence permit could be issued or extended for aliens falling under the above provisions, if this was not excluded on other grounds referred to in the same provision.

49. Section 12(4-1) of the Aliens Act provided that a residence permit could not be issued or extended in respect of an alien for whom an alert for the purposes of refusing entry had been issued by a State belonging to the common visa area of the European Union and such an alert had been introduced into the Schengen Information System in accordance with the Schengen Convention. By way of exception, a temporary residence permit could be issued or extended on humanitarian grounds or by reason of international commitments.

50. Section 7-2(2)(3) of the Obligation to Leave and Prohibition on Entry Act (*Väljasõidukohustuse ja sissesõidukeelu seadus*) provides that no term for voluntary compliance with the obligation to leave is assigned in the expulsion order and it shall be enforced immediately if the order is made in respect of an alien who has arrived in Estonia illegally. Section 7-2(2)(4) provides that the same applies to an alien in respect of whom a prohibition on entry has been imposed.

51. Section 33-5(3) of the Obligation to Leave and Prohibition on Entry Act provides that in order to amend the period of validity of the prohibition on entry into the Schengen area the alien is required to turn to a member State of the Schengen Convention applying the prohibition on entry.

52. In a judgment of 22 March 2007 (case no. 3-3-1-2-07) the Administrative Law Chamber of the Supreme Court found that upon issuing an expulsion order in the case in question the migration authorities had not been required to assess whether the person concerned posed a threat to the national security. An assessment related to the possible infringement of the complainant's right to respect for his family life had had to be carried out when the question whether to grant him a residence permit had been dealt with.

III. RELEVANT COUNCIL OF EUROPE MATERIAL

53. Recommendation Rec(2000)15 of the Committee of Ministers of the Council of Europe to member States concerning the security of residence of long-term migrants states, *inter alia*:

> "4. As regards the protection against expulsion
>
> a. Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:
>
> – the personal behaviour of the immigrant;
>
> – the duration of residence;

– the consequences for both the immigrant and his or her family;

– existing links of the immigrant and his or her family to his or her country of origin.

b. In application of the principle of proportionality as stated in paragraph 4.a, member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled:

– after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension;

– after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years of imprisonment without suspension.

After twenty years of residence, a long-term immigrant should no longer be expellable.

c. Long-term immigrants born on the territory of the member state or admitted to the member state before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen.

Long-term immigrants who are minors may in principle not be expelled.

d. In any case, each member state should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

54. The applicant complained that the refusal to extend his residence permit and his expulsion violated his right to respect for private and family life protected under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

55. The Government contested that argument.

A. Admissibility

56. The Government considered that the application was inadmissible because the domestic remedies had not been exhausted. They pointed out that the judicial proceedings related to the applicant's expulsion order and his actual expulsion were pending before administrative courts. Moreover, the applicant could also submit a new application for a residence permit once the circumstances changed. The Government also noted that the applicant had not contested the prohibition on entry to the Schengen area applied by Sweden and that Estonia had to adhere to that restriction.

57. Alternatively, the Government argued that the applicant had failed to comply with the six-month rule since his initial petition to the Court had not contained sufficient factual information.

58. The applicant disagreed. In respect of the exhaustion issue he argued that the Government had failed to refer to any domestic case-law demonstrating the effectiveness of challenging the expulsion order considering that he had already been expelled from Estonia. Indeed, during the proceedings before the Strasbourg Court, a first-instance administrative court had dismissed the applicant's complaint against the expulsion order. As concerns the possibility of reapplying for a residence permit, the applicant noted that the Government had not specified what circumstances had changed in the meantime and argued that since his application had been rejected by the migration authorities and the courts, he was not required to make another similar application in order to comply with the requirement of exhaustion of domestic remedies before applying to the Court.

59. The applicant further argued that he had raised all his complaints in his initial application to the Court and provided the Court with the documents available to him. Therefore, he had complied with the six-month rule.

60. The Court notes that after the Estonian authorities' refusal to grant the applicant a residence permit he had no legal basis for staying in Estonia. He challenged the refusal before the domestic judicial authorities. His complaint was dismissed, after which he lodged an application with the Court. The Court considers that the fact that it was – and still is – open to the applicant to submit further applications for a residence permit to the Estonian authorities cannot render his application to the Court premature. The possibility of proceedings identical to those complained about being initiated in the future does not prevent the Court from dealing with the outcome of the original proceedings; holding otherwise would mean that the complaint would remain premature forever and lead to a denial of the possibility to lodge an application in such circumstances.

61. As concerns the ongoing judicial proceedings related to the expulsion order, the Court notes that this order was issued on 31 January 2011, it was immediately enforceable and did not contain any substantive

considerations. Although the applicant challenged the order before the Tallinn Administrative Court and also requested the application of an interim measure (staying the expulsion) – a request that was dismissed by the Administrative Court on 26 May 2011 – these steps were not capable of preventing the applicant's actual removal on 27 May 2011. The Court has doubts as to the applicant's chances of obtaining the right to reside in Estonia through these proceedings, which appear to constitute consequences of a rather technical nature that followed the refusal to grant him a residence permit. Indeed, on 2 March 2012 the Tallinn Administrative Court dismissed the applicant's complaints related to the expulsion order and his actual expulsion. The Court also notes that the Government have not provided it with any examples of domestic case-law where an expelled person's complaint against an expulsion order or actual expulsion was allowed after his or her removal from the country, given that the final refusal to grant him or her a residence permit had been made beforehand, as in the present case.

62. In respect of the prohibition on entry to the Schengen area, the Court notes that under section 12(4-1) of the Aliens Act, by way of exception, a residence permit could be issued despite such prohibition being in force. Thus, the Estonian authorities were not prevented from considering the applicant's application for a residence permit on its merits on that basis; indeed, they did consider it, weighing in substance the applicant's rights against the public interest.

63. In these circumstances, the Government's objections as to the non-exhaustion of domestic remedies have to be dismissed.

64. The Court further notes that the application was lodged with it on 10 September 2010, that is within six months of the Supreme Court's decision not to examine the applicant's appeal (10 March 2010). The Court considers that the application form contained sufficient information for it to be considered an "application" within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court. Accordingly, this objection also has to be dismissed.

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

66. The applicant argued that the Estonian authorities had failed to strike a fair balance between the aims they had pursued and his right to respect for

his family and private life. He emphasised that he had spent his whole life in Estonia and being a second-generation immigrant had no ties whatsoever with any other country. Therefore, he deserved increased protection under the Convention.

67. In respect of the offences committed by him, the applicant was of the view that they were most appropriately characterised as petty crime. In particular, all offences committed in Estonia after his conviction on 22 March 2001 had been classified as misdemeanours under national law and he had been punished with small fines. The convictions in 1997 and 2000 had only related to minor bodily injuries.

68. In respect of the drugs-related offences, the applicant submitted that he had never been involved in drug dealing. Rather, his conviction in Sweden had concerned smuggling a controlled substance into Sweden without prescription. The applicant's drugs-related convictions in Estonia had all been misdemeanours concerning drug consumption and not supply.

69. Furthermore, the applicant asserted that he had made successful efforts to overcome his drug addiction, having received treatment in Estonia and France and that he had not used drugs since 2007. He had not engaged in any criminal activity during the period of almost one and a half years between his readmission to Estonia and his placement in detention pending expulsion. He had only been punished for minor traffic offences and once on suspicion of being intoxicated.

70. The applicant argued that Estonia was the only country in which he had developed, since his birth, a network of personal, social and economic relations. He had been born in that country and had lived there all his life. The fact that he had not obtained Estonian nationality through naturalisation had not resulted from his lack of motivation but was to be explained by the obstacles encountered by him. He had been told by officials that perfect knowledge of Estonian had been required to pass a language exam for obtaining Estonian nationality but he could not afford the language courses. Nevertheless, he had sufficient command of Estonian for the purposes of day-to-day communication and had been fully integrated into Estonian society. He also noted that Russian was widely spoken in Estonia. As concerns his requests for translations of official documents, the applicant submitted that these had been in complex legal language and he had believed that he had to understand all the details in order to be able to present his case.

71. At the same time, he had no ties whatsoever with Russia other than nationality. He had never lived in Russia and had only visited Russia as a tourist. He had not maintained contact with anyone in that country, including his distant relatives with whom he had briefly stayed after his expulsion. He had found himself completely isolated and had numerous difficulties with housing, employment and social benefits. The mere

knowledge of the Russian language did not enable him to integrate into Russian society and the labour market.

72. The applicant also argued that his expulsion amounted to a severe interference with his family life both with his partner and his father. He had lived with V. since August 2009, they had made attempts to register their marriage, V. had regularly visited him while he had been in custody and they had maintained close contact after his expulsion, V. having visited him in Russia three times. The applicant further submitted that owing to his medical condition and his father's age they had been dependent on each other; he had also supported his father financially. Although the applicant's father and V. did not need a visa for travelling to Russia, they could only stay there for up to ninety days a year, otherwise their residence permits in Estonia could be revoked. Both his father and V. had strong family ties in Estonia. Like the applicant, V. had been born in Estonia, lived there all her life and knew no one in Russia apart from the applicant.

73. The applicant also disputed the proportionality of the three-year prohibition on entry and noted that even after its expiry the decision to grant him a new residence permit would be wholly at the discretion of the Estonian migration authorities.

(b) The Government

74. The Government considered that the expulsion of the applicant had not been disproportionate and that his rights protected under Article 8 had not been violated.

75. The Government noted that the applicant had been repeatedly convicted and punished for various criminal offences and misdemeanours. He had three criminal convictions in Estonia and one in Sweden and had been given prison terms for all these criminal offences, although initially the sentences had been suspended. All the criminal offences in question – aggravated hooliganism, violence against a police officer and drug trafficking –, as well as the misdemeanours, had been serious ones. The Government were of the opinion that the applicant had continuously and regularly committed offences which had gradually become more serious. After his readmission from Sweden he had committed five misdemeanours in Estonia and had been given the first drugs-related fine in less than four months after his return. This had demonstrated his unwillingness to improve his behaviour and attitude.

76. As regards the temporal aspect, the Government noted that the decision to refuse to extend the applicant's residence permit had been made on 18 October 2008, that is at the time when he had been serving a prison sentence in Sweden. Although the applicant's stay in Estonia after his readmission from Sweden on 10 July 2009 had had no legal basis, the Estonian authorities had decided, based on humanitarian considerations, not to expel him until the completion of the judicial proceedings in which he

sought to challenge the refusal. These proceedings had come to their end with the Supreme Court's decision of 10 March 2010. Thereafter, the applicant had left for Denmark and evaded the authorities. He had been arrested six months after his return and expelled four months later after the completion of the formalities between the Estonian and Russian authorities.

77. The Government noted that the applicant had been born and raised in Estonia but had never wanted to become an Estonian citizen. The ability to communicate at a basic level in day-to-day activities was sufficient to pass the language exam required for obtaining citizenship. Unlike his brother who had applied for and obtained Estonian citizenship, the applicant had not even tried but had chosen Russian citizenship. This indicated that he must have felt a particular connection with that country. The applicant had studied in a Russian-language school and was fluent in Russian but not in Estonian. He had visited Russia, Estonia's neighbouring country. The Government concluded that there was no reason to believe that he would find himself completely isolated. Since he had had no job in Estonia, the loss of job and income was not an issue.

78. The Government argued that the applicant had had no family life in Estonia to be protected under Article 8. His cohabitation with V. had started in 2009, after the refusal to extend his residence permit, and V. had to have been aware that the applicant had no legal basis for staying in Estonia. Therefore, V.'s possible difficulties would not be a criterion that would support granting an Estonian residence permit to the applicant, also keeping in mind that they had no children.

79. In any event, considering that the applicant had left for Denmark on an unknown date, the Government concluded that his cohabitation with V. had been neither long-term nor regular. The applicant's father and brother lived separately and had no family life with him within the meaning of Article 8. The Government also noted that the applicant's father and V. were persons of undetermined citizenship who could easily visit him in Russia since they did not need a visa for travelling to Russia. They were fluent in Russian and would have no difficulties with coping in Russia if necessary. The applicant's partner could also apply for a residence permit in Russia or, considering her ethnic origin, for Russian citizenship.

80. The Government noted that the applicant could request the amendment of the duration of the prohibition on entry; he could also apply – after its expiry or an amendment of its terms – for a residence permit, which could be granted, by way of exception, even before his criminal record had been expunged, or for a visa to enter Estonia and visit his relatives. The Government considered that the three-year prohibition on entry was proportionate in the circumstances.

2. *The Court's assessment*

(a) Whether there has been an interference with the applicant's right to respect for his private and family life

81. The Court reiterates that, as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants such as the applicant and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8 (see *Maslov v. Austria* [GC], no. 1638/03, § 63, ECHR 2008, and *Üner v. the Netherlands* [GC], no. 46410/99, § 59, ECHR 2006-XII). Indeed it will be a rare case where a settled migrant will be unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *A.H. Khan v. the United Kingdom*, no. 6222/10, § 32, 20 December 2011, and *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010). Not all settled migrants will have equally strong family or social ties in the Contracting State where they reside but the comparative strength or weakness of those ties is, in the majority of cases, more appropriately considered in assessing the proportionality of the applicant's deportation under Article 8 § 2. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Maslov*, and *Üner*, loc. cit.). However, the Court has previously held that the existence of "family life" cannot be relied on by applicants in relation to adults who do not belong to the core family and who have not been shown to have been dependent members of the applicants' family (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X; see also *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000, and, more recently, *A.H. Khan*, loc. cit., and *Anam v. the United Kingdom* (dec.), no. 21783/08, 7 June 2011).

82. The Court notes that there is no dispute between the parties that the applicant's expulsion interfered with his right to respect for his private life. The Court sees no reason to hold otherwise. However, the parties' opinions differed as to whether the applicant had a family life to be protected under Article 8. The Court considers that there is no need to determine this matter conclusively at this stage since in practice the factors to be examined in order to assess the proportionality of the deportation measure are essentially the same regardless of whether family or private life is engaged (see *A.A. v. the United Kingdom*, no. 8000/08, § 49, 20September 2011, with reference to the case of *Üner*, cited above, §§ 57-60).

83. An interference with the right to respect for private and family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", as

pursuing one or more of the legitimate aims listed therein and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

(b) "In accordance with the law"

84. The parties did not dispute that the applicant's expulsion was in accordance with the law. The Court notes that the refusal to extend the applicant's residence permit was based on sections 12(4)(5), 12 (4)(8) and 12(4-1) of the Aliens Act and his actual deportation was made pursuant to the relevant provisions of the Obligation to Leave and Prohibition on Entry Act.

(c) Legitimate aim

85. It is also not in dispute between the parties that the applicant's expulsion served a legitimate aim for the purposes of the second paragraph of Article 8. The Court observes that in its decision to refuse to extend the applicant's residence permit the Board considered that his expulsion was necessary for the protection of the constitutional rights of others. Considering the legal basis of the decision (commission of crimes), "the prevention of disorder and crime" can also be seen as a legitimate aim served by the interference.

(d) "Necessary in a democratic society"

(i) General principles

86. The main principles of the Court's case-law in respect of whether the interference was "necessary in a democratic society" have been summarised as follows (see *Üner*, cited above, §§ 54-55 and 57-58):

> "54. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, 19 February 1998, § 52, *Reports* 1998-I; *Mehemi v. France*, 26 September 1997, § 34, *Reports* 1997-VI; *Boultif v. Switzerland*, cited above, § 46; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).
>
> 55. The Court considers that these principles apply regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there. In this context the Court refers to Recommendation 1504 (2001) on the

non-expulsion of long-term immigrants, in which the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers invite member States, *inter alia*, to guarantee that long-term migrants who were born or raised in the host country cannot be expelled under any circumstances (see paragraph 37 above). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record (see paragraph 39 above), such an absolute right not to be expelled cannot, however, be derived from Article 8 of the Convention, couched, as paragraph 2 of that provision is, in terms which clearly allow for exceptions to be made to the general rights guaranteed in the first paragraph.

...

57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France*, and *Boultif v. Switzerland*, cited above; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yilmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

– the time elapsed since the offence was committed and the applicant's conduct during that period;

– the nationalities of the various persons concerned;

– the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

– whether the spouse knew about the offence at the time when he or she entered into a family relationship;

– whether there are children of the marriage, and if so, their age; and

– the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:

– the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

– the solidity of social, cultural and family ties with the host country and with the country of destination.

As to the first point, the Court notes that this is already reflected in its existing case-law (see, for example, *Şen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001, and *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 47, 1 December 2005) and is in line with the Committee of Ministers' Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification (see paragraph 38 above).

As to the second point, it is to be noted that, although the applicant in the case of *Boultif* was already an adult when he entered Switzerland, the Court has held the

'*Boultif* criteria' to apply all the more so (*à plus forte raison*) to cases concerning applicants who were born in the host country or who moved there at an early age (see *Mokrani v. France*, no. 52206/99, § 31, 15 July 2003). Indeed, the rationale behind making the duration of a person's stay in the host country one of the elements to be taken into account lies in the assumption that the longer a person has been residing in a particular country the stronger his or her ties with that country and the weaker the ties with the country of his or her nationality will be. Seen against that background, it is self-evident that the Court will have regard to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there."

(ii) Application of the above principles in the instant case

87. The Court notes at the outset that the applicant was born and brought up in Estonia and that he lived in that country for his entire life until his imprisonment in Sweden. His father and brother also lived in Estonia. Although the applicant argued that he had close family ties with his father and that they were dependent upon one another owing to his illness and his father's advanced age, the Court is not convinced that these relations extended beyond usual ties between grown-up family members. It takes note of the fact that the applicant's father lived separately with his partner and also has regard to the periods that the applicant spent in prison or abroad. The applicant's brother also has a family of his own. As concerns the applicant's relations with V., the Court notes that their cohabitation started soon after the applicant's deportation from Sweden. By that time the applicant had been refused a residence permit in Estonia and that refusal had been upheld by the first-instance court. Thus, V. must have been aware of the applicant's precarious status as regards his residence rights in Estonia. Furthermore, the applicant and V. had no children and they only made inquiries about the possibility to get married some weeks before the applicant's expulsion. Considering the above circumstances, the Court does not doubt that the applicant had strong personal ties with Estonia but finds that his family ties were weaker.

88. The Court also notes that the applicant was educated in a Russian-language school and spoke Russian as his mother tongue. It appears that his knowledge of Estonian was somewhat limited. Furthermore, the applicant never applied for Estonian citizenship. On the other hand, having applied for, and having been granted Russian citizenship at the age of twenty, the applicant must have identified himself with that country. Thus, the Court is not convinced by the applicant's argument that he had no ties with Russia. It also appears that his relatives were Russian and that his social circle mainly consisted of persons of Russian origin. The Court has regard in this context to the fact that although V. was a person of undetermined citizenship and held a permanent residence permit in Estonia, she was of Russian ethnic origin as well. The Court observes that Russia is a country geographically close to Estonia, sharing a border with it, and that the applicant has relatives in Russia – although according to him they are distant ones with whom he

maintained no contact prior to his expulsion. The Court concludes that the applicant had such links with Russia that he did not face insurmountable difficulties in settling in Russia and that V. would not have any such difficulties either if she wished to continue her relationship with the applicant.

89. Proceeding to examine the nature and seriousness of the offences committed by the applicant, the Court notes that he was refused an extension of his residence permit after having been convicted of aggravated drug smuggling in Sweden. He was sentenced to two years and four months' imprisonment for that offence and although he was released before having served the sentence in full, the sentence meted out to him is indicative of the seriousness of the cross-border drugs offence in the view of the Swedish authorities. The Swedish court also applied a seven-year ban on the applicant entering Sweden. Furthermore, it appears from the information in the case file that a prohibition on entry or stay in the Schengen area had already been applied in respect of the applicant on 20 August 2007, that is before the commission of the offence in Sweden, and that the prohibition on entering the Schengen area was subsequently extended. It is unclear whether the later extensions were related to the applicant's conviction in Sweden, but the first prohibition could evidently have had no connection to the conviction in question and must have been based on some other considerations. That being said, the application by the Swedish authorities of a prohibition on entry into the Schengen area, indicative of their assessment of the applicant's dangerousness as it may have been, did not conclusively rule out granting the applicant an Estonian residence permit. Even though the applicant might have been expected to challenge the decision of the Swedish authorities in Sweden, it was still possible for the Estonian authorities to grant him a residence permit under section 12(4-1) of the Aliens Act.

90. The Estonian authorities did not reject his application merely for the reason that there was a valid prohibition on him entering the Schengen area; rather, they made their own assessment of the circumstances of the case. In doing so, the Board had regard – in addition to his conviction in Sweden – to the applicant's other convictions, including the offences against public order and safety. The Court observes in this context that during the twelve years before the Board's refusal, the applicant had been convicted of criminal offences on four occasions. Two of the offences involved violence and one was related to narcotic drugs. Although he did not have to serve the full sentences in each instance and the first two sentences were suspended altogether (albeit the fact that he had to serve the second sentence later, after having reoffended), it remains a fact that the applicant was sentenced to a total imprisonment of eight years in the course of the twelve years preceding the Estonian authorities' refusal to extend his residence permit. In addition, the applicant had a number of convictions for misdemeanours, some of

which were drugs-related. Against this background and having regard to the applicant's age, the length of the period of his criminal behaviour as well as the seriousness of the offences, the Court is unable to conclude that the acts committed by the applicant can be regarded as "acts of juvenile delinquency" (see, by contrast, *Maslov*, cited above, § 81; see also *Joseph Grant v. the United Kingdom*, no. 10606/07, §§ 39-40, 8 January 2009). The Court reiterates, in this context, that an absolute right not to be expelled cannot be derived from Article 8 of the Convention regardless of whether an alien entered the host country as an adult or at a very young age, or indeed whether he or she was born there (see *Üner*, cited above, § 55). Furthermore, according to Recommendation Rec(2000)15 of the Committee of Ministers of the Council of Europe, each member state should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety (see paragraph 53 above).

91. The Court has also had regard to the fact that the applicant was prohibited from entering Estonia for three years following his expulsion. It observes that in a number of cases it has found a residence prohibition disproportionate on account of its unlimited duration (see, for instance, *Ezzouhdi v. France*, no. 47160/99, § 35, 13 February 2001; *Yilmaz v. Germany*, no. 52853/99, §§ 48-49, 17 April 2003; *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; and *Keles v. Germany*, no. 32231/02, § 66, 27 October 2005) while, in other cases, it has considered the limited duration of a residence prohibition as a factor speaking in favour of its proportionality (see *Benhebba v. France*, no. 53441/99, § 37, 10 July 2003; *Jankov v. Germany* (dec.), no. 35112/97, 13 January 2000; and *Üner*, cited above, § 65). The Court considers that the duration of the entry ban in the present case did not amount to a disproportionate interference with the applicant's rights guaranteed under the Convention.

92. In the light of the above, the Court considers that in the given circumstances there has been no violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. The applicant complained under Article 3 of the Convention that when he had been deported from Sweden to Estonia he had not been granted a residence or work permit and thus had had no possibility of getting social aid for subsistence or medical expenses. He further argued that his deportation to the Russian Federation had also been in breach of Article 3 because of his lack of ties with that country and owing to his illness and need for continuous medical treatment.

94. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds

that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

95. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint under Article 8 of the Convention concerning the applicant's expulsion admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 3 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach Deputy Registrar	Nina Vajić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges K. Hajiyev and M. Lazarova Trajkovska is annexed to this judgment.

N.A.V.
A.M.W.

JOINT DISSENTING OPINION OF JUDGES LAZAROVA TRAJKOVSKA AND HAJIYEV

1. We do not share the opinion of the majority in finding no violation of Article 8 of the Convention concerning the applicant's expulsion, or the majority's conclusion that the applicant's expulsion with prohibition from entering Estonia for three years did not amount to a disproportionate interference with his rights guaranteed under the Convention. In our view this approach is not in line with the case-law already established in the cases of *Üner v. the Netherlands,* (judgment of 18 October 2006, Application no. 46410/99) and *Maslov v. Austria* (judgment of 23 June 2008, Application no. 1638/03, § 74).

2. In the present case the applicant, HIV-positive and suffering from hepatitis C, was expelled to Russia after the refusal of the Estonian authorities to extend his residence permit following his criminal convictions. He was born, raised and educated in Estonia and had not permanently resided in any other country until his expulsion from Estonia. His only link with Russia was his Russian Federation citizenship granted when he was twenty years old. He had never lived in Russia and had no place of residence or close relatives there. His father, brother and partner V. lived in Estonia, where he has strong family, private and social ties. He speaks Russian and his knowledge of Estonian was graded as "good" at school. The applicant was expelled to Russia on 27 May 2011 and he lived on the street for some time. Some of the medicines he had used in Estonia were not available to him in Russia.

3. In an area of profound changes in Europe, from both a human rights and an economic viewpoint, long-term legal residents have stronger ties with the host country than with the country of their nationality. They participate in the economy by working and paying taxes and they are influenced by the culture, language and education of the host country. As a result of this reality, nationality is defined as a legal and not an effective bond with the country. The Court pointed out that although Article 8 provides no absolute protection against expulsion for any category of aliens, including those who were born in the host country or moved there in their early childhood, regard is to be had to the special situation of aliens who have spent most, if not all, their childhood in the host country, were brought up there and received their education there (see *Üner* § 55 and *Maslov* § 74). This is the reason why we look at the sum total of the social ties with the community in the host country as part of the concept of "private life". The concept of expulsion to the country of nationality without any other supporting element is not convincing and leads to interference with the applicant's private and family life.

4. We find it problematical in the judgment that “the Court does not doubt that the applicant had strong personal ties with Estonia but finds that his family ties were weaker” (§ 87). It is important to note that the fundamental principles that laid the foundations for the Court’s subsequent case-law concerning the application of Article 8 of the Convention to cases involving the expulsion, following conviction, of foreign nationals legally resident in the host country are well established in the *Boultif* judgment (*Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX) and have been further developed in the *Üner* case (§§ 54-55 and 57-58) and later in *Maslov v. Austria.* In these cases, the main emphasis was consistently placed on the “family life” aspect. The Court has adopted a broad approach to the notion of “family life”. In the *Marckx* judgment it observed that “ ’family life’, within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life” (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 21, § 45). Therefore, the notion of “family life” is much broader than the notion of “family”.

5. The Court has held that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence (see *Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003-X). This acknowledgment is even more important as regards the extremely difficult health and social situation of the applicant in this concrete case. The applicant is HIV-positive and suffers from hepatitis C. We consider that at the time when he was expelled, the applicant was in an extremely vulnerable position. The support and help of his family were all the more necessary to him. He stressed that he had close family ties with his father and that because of his own illness and his father’s age they were dependent upon one another. In our view the applicant not only has strong personal ties but also strong family ties with Estonia. His brother and his brother’s family also live in Estonia. The applicant is in a relationship with V. They live together and attempted to marry, but without any success (paragraphs 43 and 44). Family is crucial for stability, support and social integration not only for children but also for adults facing life-threatening instability and uncertainty as a result of health and social problems. In this concrete case Article 8 of the Convention appears to play an enhanced role regarding the notion of family life between a seriously ill dependant adult and his family.

6. Some of the majority’s arguments are particularly problematical in our view, for example that “having applied for, and having been granted Russian citizenship at the age of twenty, the applicant must have identified himself with that country. Thus, the Court is not convinced by the

applicant's argument that he had no ties with Russia. It also appears that his relatives were Russian and that his social circle mainly consisted of persons of Russian origin" (see paragraph 88). In our view, the argument that in applying for Russian citizenship "the applicant must have identified himself with that country" does not lead to the conclusion that he should be expelled from the host country to the country of nationality. According to Article 2 of the European Convention on Nationality, "nationality means the legal bond between a person and a State and does not indicate the person's ethnic origin". Furthermore, the fact that he spoke his mother tongue better than the Estonian language and that his relatives in Estonia were Russian and his social circle mainly consisted of persons of Russian origin, is without any relevance for the outcome of the procedure for expulsion with prohibition from entering Estonia for three years. Unlike the majority, we conclude that none of these reasons was sufficient to demonstrate his links with Russia or justify expelling him to Russia, where it is difficult for him to organise his existence and his health care. We think that all these elements were primarily part of his social, cultural and family ties with Estonia, because his father and brother, his Russian relatives and friends and his partner V. all live in Estonia and not in Russia. In the circumstances of his case the support of the community where he was born and raised was of crucial importance.

7. Turning to the nature and seriousness of the offences committed by the applicant, the most important issue to be determined is whether the interference was "necessary in a democratic society". Similar to our case is the case of *Nasri v. France* (judgment of 13 July 1995, series A no. 320-B). The applicant, born deaf and dumb in Algeria, arrived in France at the age of five and was convicted several times, of theft, robbery and gang rape. In 1987, following that last conviction, the Minister of the Interior ordered his deportation. The applicant alleged violations of Articles 3 and 8 of the Convention and the Commission found violations of those Articles. In that particular case, even before the *Maslov v. Austria* case, the Court placed itself mainly in the context of Article 8. It began by pointing out that the offence at the origin of the deportation decision (gang rape) was very serious, but most of all took into account the applicant's infirmity and the very special importance of the family's support in such circumstances. The family's strong ties with France and the applicant's lack of social and cultural ties with Algeria led the Court to find a breach of Article 8 (*Nasri* § 46).

8. The Court always seeks to strike a balance between the legitimate aim of States to protect the public interest and the fundamental rights of all individuals, even criminals, to a family life. With much regret we disagree that this balance was successfully struck in this case. The applicant was

refused an extension of his residence permit after he was convicted of aggravated drug smuggling in Sweden. He was sentenced to two years and four months' imprisonment for that offence and released before having served the sentence in full. At the same time the Swedish court also applied a seven-year ban on the applicant entering Sweden. In Estonia the applicant has criminal convictions mainly for aggravated hooliganism, aggravated theft and attempted theft, and administrative offences of petty theft and consumption of narcotic substances. Between 2006 and 2009 the applicant was punished seven times for misdemeanours (illegal consumption or possession of narcotic drugs and travelling on public transport without a ticket). Like the majority we are unable to conclude that the acts committed by the applicant can be regarded as "acts of juvenile delinquency" (contrast *Maslov*, § 81), but in our view, none of his criminal convictions was of a sufficiently serious nature to endanger the interests and constitutional rights of others. We are convinced that instead of expelling him, the authorities could have used other, less severe measures.

9. For all the foregoing reasons, we consider that the decision to expel the applicant in the present case amounted to a disproportionate interference with his rights guaranteed under Article 8 of the Convention.